IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 531 OF 2007
WITH
CRIMINAL APPLICATION NO. 2971 OF 2007

Indage (India) Limited,
now known Champagne Indage Ltd.
through Miss.Shailaja Kharat
C.A. ..Applicant

Vs.

1. M/s. Chandra Agencies through
its Proprietor Mr.Roopak Vaish
and anr. ..Respondents

Mr. E.R. Naik for applicant.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 11, 2007.

P.C.:

1. Heard Mr. Naik the learned counsel for the applicant-company.

2. This is an application for condonation of delay caused in filing Criminal Application No.2971 of 2007 seeking leave to appeal against the order of acquittal passed way back on 22/3/2001 by the learned

Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai in C.C. No.86/S/2000. As per the office note the delay caused is of 6 years and 167 days. The explanation furnished in support of the prayer for condonation of delay is that after the complaint was dismissed, the applicant-company approached before this court in Criminal Writ Petition Non.372 of 2003 filed on or about 7/3/2003 i.e. after two years and as the Advocate on record failed to remove office objections, the petition was dismissed as per the conditional order dated 13/1/2005. The petitioner thereafter filed Criminal Application No. 59 of 2007 for restoration of Criminal Writ Petition No.372 of 2003 and the said application was rejected on 13/8/2007. The explanation so furnished is not satisfactory and, therefore, the applicant-company has failed to make out good and sufficient reasons to condone the delay and the reasons to arrive to this conclusion are as under.

3. The Roznama in C.C. No.86/S/2000 placed on record shows that summons were issued on 13/1/2004 and

made returnable on 10/4/2000. On 10/4/2000 complainant was absent. On 28/6/2000 the complainant along with its Advocate was absent. Again on the subsequent date the complainant was absent. On 27/1/2000 the complainant was absent and finally on 22/3/2001 the complainant was absent and, therefore, the learned Additional Chief Metropolitan Magistrate passed the following order:-

> "Complainant is absent today and also on last several dates. He is not diligent to proceed with the matter. Hence, case is dismissed for default of the complainant and the accused is acquitted under Section 256 of Cr.P.C."

. It is thus clear that for about one year the complainant remained absent continuously before the trial court and the complaint could not be proceeded. The order dated 22/3/2001 was an order of acquittal and, therefore, an appeal under Section 378 of Cr.P.C. would lie before this court. Instead the company filed initially a Criminal Writ Petition and on its dismissal in default it filed an application for

restoration of the same and when that application is rejected on 13/8/2007, this third round before this court seeking to apply for leave to appeal against the order of acquittal. The casualness shown by the applicant-company right from the stage of proceeding with the complaint before the trial court is bit large and if the delay is condoned in such a case, it would amount to a premium on the lethargy so brazenly executed by a company incorporated under the Companies Act, 1956.

4. Hence, this application is rejected.

5. Criminal Application No. 2971 of 2007 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)